(July 12, 1919).

IN THE UNITED STATES DISTRICT COURT

FOR THE TERRITORY OF HAWAII.

IN THE MATTER OF THE APPLICATION OF :

TATSUSHI SAITO :

AND OTHERS OF THE JAPANESE RACE :

FOR NATURALIZATION :

J.B. Lightfoot, Attorney for Petitioners :

William Ragsdale, Agent for, and

S. C.Huber, United States Attorney, representing the Bureau of Naturalization.

HORACE W. VAUGHAN, JUDGE.

OPINION

The applicants seek naturalization under the provision of the seventh subdivision of the Act of May 9, 1918. They are of the Japanese race, and are not "white persons" within the meaning of these words as they are used in section 2169 of the Revised Statutes, as determined by the Courts; nor are they of African

nativity or descent. But they are serving in the Army of the United States, and they come within the language of the provisions of the seventh subdivision of the act of May 9, 1918; and they are entitled to naturalization thereunder unless the said provisions of said subdivision are limited by, and the word "alien", wherever it occurs therein as well as in other places in the act, should be construed as meaning an alien who is a white person or of African nativity or descent within the meaning of section 2169 of the Revised Statutes. The question is, therefore, whether the provisions of said subdivision are so limited, and the word "alien" therein should be so construed.

But for the repealing clause of the act there would be no question about it. If the language of the repealing clause were stricken from the act, every time the word "alien" occurred, section 2169 of the Revised Statutes would limit it to aliens who are free white persons or of African nativity or descent. In re Kumagai, 163 F. 922; In re Knight, 171 F. 299;

In re Bessho, 178 F. 245; and many others. Every act authorizing the naturalization of aliens has been so construed by the Courts, and had been at the time the act of May 9, 1918, was passed. And Congress must be presumed to have known this. Case of Sewing Machine Companies, 18 Wall, 584, But the language of the repealing clause is in the act, and reads as follows:

"All acts or parts of acts inconsistent with or repugnant to the provisions of this act are hereby repealed; but nothing in this act shall repeal or in any way enlarge section twenty-one hundred and sixty-nine of the Revised Statutes, except as specified in the seventh sub-division of this act and under the limitation therein defined."

What does this language mean? Evidently it means that section 2169 is not "repealed or enlarged" but remains in force and limits all the provisions of the act "except as specified in the seventh sub-division". But what does the language, "except as specified in the seventh subdivision", mean? What specifidation or specifications of the seventh subdivision are referred to? The seventh subdivision does not mention section 2169, nor

make any specification relative to it; but it contains many specifications relative to the naturalization of several classes of persons, some aliens and some not, all of whom are engaged or have been engaged in some kind of public service in this country. It is evident that as to some one or all these specifications, section 2169 is "repealed or enlarged" so as to take it or them from under the limitation of section 2169, by which it or they would be limited if the language of the repealing clause were not in the act. What specifications of the seventh subdivision are referred to? Let us examine. Some of the provisions of the seventh subdivision were taken from prior acts, some minor changes in the language being introducted; and some of the provisions were new, enacted for the first time. This may be seen from an examination and comparison of section 2174 of the Revised Statutes, providing for the naturalization of alien seamen serving on merchant vessels and Section 2166 of the Revised Statutes providing for the naturalization of honorably discharged soldiers, and exempting them from certain formalities prescribed as to others, and the act of July 26, 1894, providing for the naturalization of aliens honorably

discharged from service in the Navy or Marine Corps, and the act of June 20, 1914, relating to the same subject. The provisions of the seventh subdivision relative to the same matters were enacted in lieu of those laws, which were repealed. This accounts in some measure for the involved and complicated language used in the subdivision and the length of it, and the different specifications as to the different groups or classes which should be noticed:

(1) "Any native-born Filipino of the age of twenty-one years and upward who has declared his intention to become a citizen of the United States and who has enlisted or may hereafter enlist in the United States Navy or Marine Corps or Naval Auxiliary service, and who, after service of not less than three years, may be honorably discharged therefrom, or who may receive an ordinary discharge with recommendation for re-enlistment." This was new legislation to enable Filipinos in the Naval Service to be naturalized without proof of residence.

(2) "Any alien, or any Porto Rican not a

citizen of the United States, of the age of twenty-one years and upward, who has enlisted or entered or may hereafter enlist in or enter the armies of the United States, etc., or in the United States Navy, etc., or who has served for three years on board of any vessel of the United States Government, or for three years on board of merchant or fishing vessels of the United States of more than twenty tons burden, and while still in the service on a re-enlistment or re-appointment, or within six months after an honorable discharge or separation therefrom", etc. This was old legislation with new features and additions and changes to meet conditions.

(3) "Any alien serving in the Military or Naval Service of the United States during the time this country is engaged in the present war". This was new legislation required by conditions caused by the war.

(4) "Any alien declarant who has served in the United States or Navy, or the Philippine Constabulary, and has been honorably discharged therefrom, and has been accepted for service

in either the Military or Naval Service of the United States on condition that he become a citizen of the United States". This was an extension and adaptation of old legislation to conditions.

As to the first and second groups, it is provided that any one or either of them "may, on presentation of the required declaration of intention, petition for naturalization without proof of the required five years' residence within the United States if upon examination by the representative of the Bureau of Naturalization, in accordance with the requirements of this subdivision, it is shown that such residence cannot be established." Any one in the third group "may file his petition for naturalization without making the preliminary declaration of intention and without proof of the required five years' residence in United States". There are other provisions in regard to the fourth group; and there are other provisions that apply to all the groups, to any person "embraced within this subdivision"; but

none of these have any bearing on the question except as they show that every provision of the seventh subdivision has in view the speedy naturalization of those engaged in any public service of the United States having relation to the conduct of the war, whose loyalty to the United States is proven by such service. And there is nothing about section 2169 of the Revised Statutes anywhere in any of the language of the subdivision. What specifications of the seventh subdivision are referred to in the repealing clause, as to which section 2169 is repealed or "enlarged" so as to permit them to prevail over the limitation contained in its language? Evidently, some specification or specifications which, in the opinion of Congress, would be limited by section 2169 if some language were not used to save them from it. Then what specification or specifications of the seventh subdivision would be limited by section 2169 if the language of the repealing clause were not in the act? All of them except those which make specific provision for these native-born Filipinos and Porto Ricans. These,

being specific and designating Filipinos and Porto Ricans by name, and neither Filipinos nor Porto Ricans being aliens, needed nothing to save them from the limitation of Section 2169, but all those relating to aliens did.

It is urged by the Bureau of Naturalization that the language of the repealing clause, "except as specified in the seventh subdivision" refers to that part of the seventh subdivision and to that part only relating to "any native born Filipino". This view was urged in the Feronda case.

In January 1919, Leon Feronda, a native-born Filipino, residing in the Territory of Hawaii, serving at the time in the military forces of the United States, petitioned for naturalization under this seventh subdivision of the act of May 9, 1918. The Bureau of Naturalization opposed his petition upon the ground that the said seventh subdivision does not authorize the naturalization of any Filipinos except those named therein, to wit, "any native born Filipino of the age of twenty years and upwards who has declared his intention to become

a citizen of the United States and who has enlisted or may hereafter enlist in the United States navy or Marine Corps or Naval Auxiliary Service, and who, after service of not less than three years, may be honorably discharged therefrom, or who may receive an ordinary discharge with recommendation for re-enlistment"; and that, as the petition of Feronda did not bring him within the language quoted, he could not be naturalized because, being neither a white person nor of African nativity or descent, he was excluded by section 2169 of the Revised Statutes. This Court, following the opinion of Circuit Judge Morrow in the Bautista case, 245 Fed. 765, held that section 30 of the act of June 29, 1906, includes within its language native-born Filipinos and is not limited by section 2169 of the Revised Statutes in its provision for their naturalization. Discussing the question, this Court said:

"The purpose of Congress in making provision for the naturalization of those Filipinos specified in the seventh subdivision may be seen when it is remembered that the Filipino, if included within the language of section 30 of the

act of June 29, 1906, must prove residence in a state or an organized territory of the United States in order to get naturalized under said Section 30. The Filipino designated in the seventh subdivision can not prove such residence. He could not be naturalized under section 30 without proving such residence. The language of the seventh subdivision was necessary in order to let him be naturalized without such proof.

"Section 30 of the act of June 29, 1906, authorized the naturalization of 'all persons not citizens who owe permanent allegiance to the United States, and who may become residents of any state or organized territory of the United States', and provides for the naturalization of such persons by making "all the applicable provisions of the naturalization laws apply to and authorize the admission to citizenship of all 'such persons, with the modification therein stated, which has no bearing on the question under discussion. Section 2169 of the Revised Statutes is a provision of the Naturalization laws. It could be applied in all cases in which naturalization is sought under section 30. If

applied in cases in which native born Filipinos are petitioners it will exclude them. At the time I decided the Ocampo case, none of the opinions holding that it should not be applied, had given any better reason for so holding than that the Filipino is not an alien, and that section 2169 applies only to aliens. The fallacy of this reason is seen when it is remembered that section 30 provides for the naturalization of those coming within its terms by making all the applicable provisions of the laws providing for the naturalization of aliens apply to and authorize the naturalization of such persons. No sound reason why section 2169 should not be applied appearing to me, following the Alverto case, 198 Fed. 688, I held it to be applicable and that it limited the naturalization authorized by section 30 to 'free white persons and persons of African descent or nativity'. Since that time the question has been before Circuit Judge Morrow, and in an able opinion, In re Bautista, 245 Fed. 765, he has reviewed the history of the enactment of section 30, and his opinion has convinced me

that it was the intention of Congress to include the Filipinos among those for whose benefit section 30 was enacted, and that the language of said section includes them, and that to apply section 2169 would defeat the very purpose, at least one of the purposes of the enactment of section 30.

"The fact that the seventh subdivision makes provisions for the naturalization of those Filipinos specified therein shows no purpose on the part of Congress to limit the naturalization of Filipinos to those specified, but a recognition by Congress that section 30 of the act of June 29, 1906, does not, on account of its requirement as to residence, provide for those specified. I can see no reason why Congress should limit the naturalization of Filipinos, if they are to be admitted to citizenship, to those who have served in the Navy or Marine Corps or Naval Auxiliary Service. Yet that is the substance of the contention by the United States Attorney on behalf of the Bureau of Naturalization - that the purpose of Congress in making the provision for the Filipinos speci-

fied in the seventh subdivision and using the peculiar language of the repealing clause of the act of May 9, 1918, was to limit the naturalization of Filipinos to those specified in said seventh subdivision and to forbid the naturalization of all others. The action of Congress supports the correctness of the opinion of Judge Morrow, for it shows that Congress must have been of the opinion that the language of section 30 of the act of June 29, 1906, includes Filipinos and is not limited by section 2169. Surely Congress did not intend to permit the naturalization of Filipinos serving in the Navy without proof of residence and to prohibit the naturalization of Filipinos residing in the United States and serving in the Army. And the only way it is possible to avoid the imputation of such an intention to Congress is to say that Congress realized that all provisions for the naturalization of aliens could be applied by virtue of section 30 of the act of June 29, 1906, for the benefit of all Filipinos who could prove residence."

If Congress knew, as it must be presumed to have known, that section 2169 does not forbid the naturalization of Filipinos under section 30 of the act of June 29, 1906, though they were not named therein, surely it must have known that section 2169 would not interfere with the naturalization of Filipinos or Porto Ricans under the specific provisions of the seventh subdivision of the act of May 9, 1918, naming them, even if the language "except as specified in the seventh subdivision" were not used. The only specification of the seventh subdivision that does not relate to aliens other than that which relates to Filipinos, is that relating to Porto Ricans. The word Porto Ricans is not ethnic but geographic, does not designate persons of one race, but those of any race who are natives of the island of Porto Rico, not only the descendants of the aborigines who were living on the island at the time it was discovered by Columbus, but all natives of the island and includes persons of other races as well as those of the Caucasian

and African, though the population of the island was, according to the census of 1910, about two-thirds white and one-third negro. No Porto Rican of the white race or of the negro race or of "African descent" is denied naturalization by section 2169. That section permits the naturalization of aliens of those two races; and nearly all Porto Ricans are of one or the other or of both. Congress must, therefore, have known that there was no need for repealing or enlarging section 2169, to permit the naturalization of Porto Ricans of either or of both these races. There could not possibly have been any need for repealing or enlarging section 2169 to permit the naturalization of any Porto Rican except those few of them who are of some other race than those permitted by section 2169. And if Congress was willing to repeal or enlarge section 2169 to permit the naturalization of Porto Ricans of other races than the white and the black, was it unwilling to permit the naturalization of any others of other races than the white and black besides Porto Ricans? What

reason was there for lifting the ban of section 2169 in favor of the Chinese and Japanese living in Porto Rico and keeping it on against the Chinese and Japanese living in the United States? Surely Congress did not use the language of the repealing clause in order to permit the naturalization of the negligible number of Porto Ricans of a race excluded by Section 2169.

Some courts have construed the language of the repealing clause, "except as specified in the seventh subdivision", to refer to the provisions relating to Filipinos and Porto Ricans, and have referred to those provisions as the "exceptions specified." Let it be noted that the repealing clause does not say "exceptions specified", but does say "except as specified in the seventh subdivision". The provisions relating to Filipinos and Porto Ricans are not exceptions to section 2169. Neither of them is an exception to it. That relating to the Filipino is a specific designation of those persons of the designated race who possess certain qualifications, and an authorization of their

naturalization in a prescribed manner, That relating to Porto Ricans is a specific designation of those persons who are natives of the designated Island who possess certain qualifications and an authorization of their naturalization in the manner prescribed. Now, would that relating to the Filipino or that relating to the Porto Rican be limited by section 2169 if the act had not contained the language "except as specified in the seventh subdivision"? Would section 2169 have limited the class of persons designated, either Filipinos or Porto Ricans, if "except as specified", etc., had been left out of the repealing clause? Certainly not. Such a construction would have annulled the provision relating to the Filipino, the very language of which takes it out of the operation of section 2169 without the aid of language of the repealing clause. The use of the specific language as to each, designating one by the name of his race and the other by the name by which he is called on account

of his nativity takes the provisions out of each out of the operation of the general language of section 2169 without the aid of the language "except as specified in the seventh subdivision". Of course, it has been held, and properly so, that section limits all provisions of all laws for the naturalization of aliens, unless Congress provides otherwise. But it does not limit re-specific provisions for the naturalization of those who are not aliens. Therefore, it was not necessary for the act of May 9, 1918, to contain the proviso that "nothing in this act shall repeal or enlarge section 2169 of the Revised Statutes", in order to save that section from repeal or to limit all the general provisions of the act by section 2169. All such provisions would have been limited by section 2169 if the act had said nothing about it. Nor to was it necessary for the act to contain the language "except as specified in the seventh subdivision of this act and under the limitation therein defined" in order to save the provisions made for the naturalization of the Filipinos and Porto Ricans from the operation of section

2169. In other words, if this last quoted language had been stricken from the bill and the proviso had been left unnecessarily guarding section 2169 from repeal, the specific provision for the naturalization of those Filipinos and Porto Ricans specified in the seventh subdivision would have been unaffected by section 2169. And if the proviso saving section 2169 from repeal had been stricken from the bill, every time the word alien occurred in the act, it would have meant and would have been construed by the courts, following all the decisions on the question, to mean aliens such as are designated in section 2169. Congress must be presumed to have known this, and to have inserted the proviso and the exception for some purpose; and the language "except as specified in the seventh subdivision", etc. must be construed to refer to something specified in the seventh subdivision which would be limited by section 2169 if such language were not in the act. It can not, therefore, be construed to refer to the provision made for the naturalization of Filipinos

or Porto Ricans. I repeat that there is no exception specified in the seventh subdivision. But, "as specified in the seventh subdivision", "aliens serving in the Military or Naval Service of the United States during the time this country is engaged in the present war" and aliens engaged in certain specified service of the United States for the length of time specified, were given the right to naturalization; and these specifications as to aliens, as Congress must be presumed to have known, would have been subject to the limitation of section 2169 unless saved from such limitation by the use of some language to accomplish their salvation. And they are the only things "specified in the seventh subdivision" that needed such salvation. If Congress wished to save these specifications of the seventh subdivision from the limitation of section 2169 and leave all other portions of the act of May 9, 1918, under such limitation, it used very appropriate language to do so, and must be presumed to have intended to do so.

It is a general rule, without exception,

in construing statutes, that effect must be given to all their provisions, if such a construction is consistent with the general purpose of the act, and the provisions are not necessarily conflicting; and all acts of the legislature should be so construed, if practicable, that one section will not defeat or destroy another, but explain and support it. "We are not at liberty", said Mr. Justice Strong, "to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word. As early as in Bacon's Abridgment it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant"; this rule has been repeated innumerable times". 1 Fed. Stat. Ann. (2d Ed.), p. 46.

The construction contended for by the Bureau is that which should be given if the language of the repealing clause and the pro-

viso and the exception were stricken from the act. It is to be presumed that all the language of the repealing clause, the proviso and the exception was used purposely and that the act means something on account thereof it would not mean if either the repealing clause or the proviso or the exception were out of it.

What, then, was the purpose of Congress in using the language of the repealing clause? At the time the act of May 9, 1918, was passed, aliens had been drafted into the service of our country along with citizens, and those who had not claimed exemption therefrom were being prepared for service abroad. Our country was preparing to send them to France and to Belgium and to wherever else the Government should deem it advisable to send them. The purpose of the passage of the act of May 9, 1918, was that our Government might be able to extend to and secure for <u>all</u> in our Military Service and all in our Naval Service the protection and treatment they were entitled to expect on account thereof. We could not insist upon our allies or upon our

enemies treating aliens in our service as citizens of the United States. Therefore provision was made for the speedy naturalization of all aliens in the Military Service and all in the Naval Service and for the elimination of nearly all the "red tape" that interferred therewith. Aliens of all races, those within section 2169 and those without, Caucasians and Orientals, Japanese, Chinese and Koreans, had been drafted; and those who had not claimed exemption were in service, and were about to be sent abroad to fight for us. Was it not as much our duty to extend the protection which citizenship only would afford to the Orientals in our service as it was to extend it to others? We had drafted them into our service and they had thought enough of us to be willing to serve, to risk their lives in our service. Was Congress unwilling to grant citizenship to those among them found to possess the qualifications required of others? I hope it is not improper to say that I do not believe Congress was so illiberal. While preparing to send men who had been drafted into our

service out of our country to battle for us and while providing for conferring citizenship on them that we might be able to give them the protection and treatment they deserved and were entitled to expect of us on account of the service in which they were engaged, Congress was not so illiberal as to exclude from the benefits of the provision it was making for those in our service those among them who were not of the Caucasian or African races because they were not of either of said races.

My attention has been called to the fact that when the Conference Report on H.R. 8152, which became the act of May 9, 1918, was before the House of Representatives, the Chairman of the Committee which reported the bill, in answer to questions said that the act would not authorize the naturalization of Orientals, that section 2169 of the Revised Statutes would prevent. I have read the discussion that occurred in the House and that which occurred in the Senate when the Conference Report was before them. It is evident that the Chairman of the

House Committee did not realize that the effect of the language of the repealing clause, "except as specified in the seventh subdivision", etc., would take the specifications of the seventh subdivision out of the operation of section 2169, but whether he realized it or not, such is the effect of said language. Nothing that was said in the Senate relates to the question. Other members of the House may have understood the matter and disagreed with the construction placed on the language by the Chairman; and the Senate may have understood the question, may have known that the language of the repealing clause referred to would take the specifications of the seventh subdivision out of section 2169, and have voted for the adoption of the Conference Report on that account. And it is to be noted that though the bill originated in the House, it was amended in the Senate by striking out all after the enacting clause and substituting the language which is now found in the act with such minor changes as were agreed to in the Conference.

But, however, that may be, as was said by Chief Justice Taney in Aldridge v. Williams, 3 How. 24, "The judgment of the court can not in any degree be influenced by the construction placed upon the act by individual members of Congress in the debate which took place on its passage". The reason of this rule was so well explained by Mr. Justice Story in Mitchell v. Great Works Milling, etc., Co., 17 Fed. Cases No. 9662, it is sufficient to refer to what he said without commenting upon it. See 1 Fed. Stat. Ann. (2d Ed.), p. 62, Statutes and Statutory Construction.

Unless all the language of the repealing clause is useless surplusage, it takes all the specifications of the seventh subdivision out of the operation of section 2169 of the Revised Statutes, and leaves all other parts of the act under it.